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In re Application of	:	
Keough et al.	:	
Application No.: 09/889,053	:	
PCT Application No.: PCT/US00/00790	:	DECISION ON
International Filing Date: 12 January 2000	:	
Priority Date: 20 January 1999	:	PETITION
Attorney Docket No.: 7379M	:	
For: METHOD AND KIT FOR	:	
SEQUENCING POLYPEPTIDES	:	UNDER 37 CFR § 1.137(b)

Applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR § 1.137(b)," filed in the United States Patent and Trademark Office (hereinafter "USPTO") on 16 April 2004 is DISMISSED.

#### BACKGROUND

On 12 January 2000, applicants filed international application PCT/US00/00790. The international application claims a priority date of 20 January 1999 and designates the United States.

A Demand electing the United States was filed prior to the expiration of 19 months from the priority date. As such the deadline for filing a copy of the application and the basic national filing fee was extended to 20 July 2001.

On 11 July 2001, applicants filed a transmittal letter for entry into the national stage of the United States, which was accompanied by, the basic filing fee, oath or declaration of the inventor(s), a preliminary amendment and a change of power of attorney.

On 27 August 2001, the USPTO mailed to Applicants a Notification to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures and Notification of Missing Requirements Under 35 USC 371 in the United States Designated/Elected Office (Form PCT/DO/EO/905) requiring an oath or declaration, translation of the application in English and a surcharge.

In response to the Notification to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures and Notification of Missing Requirements Under 35 USC 371 in the United States Designated/Elected Office, the Applicants submitted on 24 September 2001 Disk Sequence List in accordance to 37 CFR §§ 1.821(c) and (e).

On 20 March 2002, the USPTO mailed to Applicants a second Notification of Missing Requirements Under 35 USC 371 in the United States Designated/Elected Office. The reasoning for the second Notification of Missing Requirements was the Disk Sequence List submitted on 24 September 2001 failed to comply with the requirements for such a disclosure as set forth in 37 CFR §§ 1.821-1.825.

In response to the second Notification of Missing Requirements mailed on 19 March 2002, the Applicants submitted on 22 April 2002 a second Disk Sequence List in accordance to 37 CFR §§ 1.821(c) and (e).

On 26 June 2002, the USPTO mailed to Applicants a Notification of Defective Response. The reasoning for the Notification of Defective Response was the Disk Sequence List submitted on 22 April 2002 failed to comply with the requirements for such a disclosure as set forth in 37 CFR §§ 1.821-1.825.

In response to Notification of Defective Response mailed on 26 June 2002, the Applicants submitted on 22 July 2002 a third Disk Sequence List in accordance to 37 CFR §§ 1.821(c) and (e).

On 19 March 2003, the USPTO mailed to Applicants a second Notification of Defective Response. The reasoning for the Notification of Defective Response was the Disk Sequence List submitted on 22 July 2002 failed to comply with the requirements for such a disclosure as set forth in 37 CFR §§ 1.821-1.825.

On 09 February 2004, the USPTO mailed to Applicants Notification of Abandonment for failure to respond to Form PCT/DO/EO/905 mailed on 03/19/2003 within the time period set therein.

On 14 April 2004, applicants filed the instant petition to revive the application accompanied by, *inter alia*, the petition fee, statement that the entire delay was unintentional and disk containing computer readable copy of the Sequence Listing.

### DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by a proper reply, a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, the petition fee

required by law, and a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicants' statement in the petition that "[t]he entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995. However, an acceptable computer readable form (CRF) of the "Sequence Listing" is missing (see attached raw sequence listings error report). Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have not been satisfied.

### CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is required.

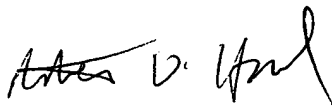
A proper response must include an acceptable computer readable form (CRF) of the "Sequence Listing".

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Commissioner for Patents, Mail Stop PCT, PO Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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Encl: Error Report